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IN THE SUPREME COURT OF THE STATE OF IDAHO

| | | |
|-----------------------|---|-----------------------------|
| STATE OF IDAHO, |) | |
| |) | |
| Plaintiff-Respondent, |) | NO. 43965 |
| |) | |
| v. |) | ADA COUNTY NO. CR 2015-8170 |
| |) | |
| RYAN DEAN BEVARD, |) | REPLY BRIEF |
| |) | |
| Defendant-Appellant. |) | |
| _____ |) | |

REPLY BRIEF OF APPELLANT

**APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF ADA**

HONORABLE STEVEN J. HIPPLER
District Judge

ERIC D. FREDERICKSEN
Interim State Appellate Public Defender
State of Idaho
I.S.B. #6555

ANDREA W. REYNOLDS
Deputy State Appellate Public Defender
I.S.B. #9525
P.O. Box 2816
Boise, ID 83701
(208) 334-2712

**ATTORNEYS FOR
DEFENDANT-APPELLANT**

KENNETH K. JORGENSEN
Deputy Attorney General
Criminal Law Division
P.O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534

**ATTORNEY FOR
PLAINTIFF-RESPONDENT**

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STATEMENT OF THE CASE

Nature of the Case

In his opening brief, Mr. Bevard argued the district court erred in allowing the jury to learn about the nature of his prior felony convictions because this information was more prejudicial than probative. In its brief, the State argues the district court did not err and, if it did, the error was harmless. The State is incorrect. Mr. Bevard's credibility was absolutely central to this case, and the State cannot establish beyond a reasonable doubt that the district court's error in allowing the jury to learn about the nature of his prior felony convictions was harmless. This Court should vacate Mr. Bevard's conviction and remand this case to the district court for a new trial.

Statement of Facts and Course of Proceedings

Mr. Bevard relies on the statement of facts and course of proceedings he included in his opening brief. (App. Br., pp.1-4.)

ISSUE

Did the district court err in concluding the State could impeach Mr. Bevard with both the fact and nature of his prior felony convictions pursuant to IRE 609?

ARGUMENT

The District Court Erred In Concluding The State Could Impeach Mr. Bevard With Both The Fact And Nature Of His Prior Felony Convictions Pursuant To IRE 609

Mr. Bevard argued in his opening brief that the district court erred in concluding the probative value of the nature of his prior felony convictions—grand theft and burglary—outweighed their prejudicial impact, and should have limited the impeachment to proof of the fact of his prior convictions alone. (App. Br., pp.7-12.) In its brief, the State argues the district court did not err, and, if it did, its error was harmless. (Resp. Br., pp.9-15.) Mr. Bevard submits this brief only to address the State’s argument with respect to harmless error. In light of the central role that Mr. Bevard’s credibility played in this case, where he testified that he did not know the bills he attempted to use at Walmart were counterfeit, the State cannot establish beyond a reasonable doubt that the district court’s error in allowing the jury to learn of the nature of Mr. Bevard’s prior convictions was harmless.

When a defendant objects to an error and shows that a violation occurred, the State bears the burden of proving, “beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained.” *State v. Perry*, 150 Idaho 209, 221 (2010) (quotation marks omitted). The issue “is whether the jury actually rested its verdict on evidence establishing the presumed fact beyond a reasonable doubt, independently of” the inadmissible evidence. *Yates v. Evatt*, 500 U.S. 391, 404 (1991). “The inquiry, in other words, is not whether, in a trial that occurred without the error, a guilty verdict would surely have been rendered, but whether the guilty verdict actually rendered in this trial was surely unattributable to the error.” *Sullivan v. Louisiana*, 508 U.S. 275, 279 (1993).

The district court recognized the case against Mr. Bevard was “almost entirely made or lost on the credibility of [his] testimony.” (Tr. Vol. I, p.272, Ls.22-24.) The only real question for the jury to decide was whether Mr. Bevard knew he was passing counterfeit bills. He testified he did not, and the State argued to the contrary. (Tr. Vol. I, p.301, Ls.1-3; p.378, Ls.10-12 (“Well, you absolutely know what he knew when he passed the money, because his actions communicate it to you.”).) The State points out in its brief that the Walmart clerk testified the bills did not feel right to her. (Resp. Br., pp.14-15.) The fact that the bills did not feel right to a person whose job involves frequent contact with money does not mean Mr. Bevard would have known the bills were fraudulent. The State also points out that Mr. Bevard admitted lying to the police and making a false 911 report. (Resp. Br., p.15.) Mr. Bevard’s admissions support, rather than detract, from his credibility, as he clearly accepted responsibility for his wrongful conduct, but denied knowing the bills were counterfeit.

As a result of the district court’s ruling, the jury learned not just that Mr. Bevard had two prior felony convictions, but that he had two prior felony convictions which, like the present case, involved an intent to take from another. It is, as Mr. Bevard argued in his opening brief, “absurd” to suggest the jury considered the nature of Mr. Bevard’s prior convictions solely for his propensity to tell the truth. *See People v. Allen*, 420 N.W.2d 499, 510 (Mich. 1988). The State cannot show that Mr. Bevard’s guilty verdict was surely unattributable to the fact the jury learned about the nature of his prior convictions. The district court’s error was thus not harmless and this Court should remand this case to the district court for a new trial.

CONCLUSION

For the reasons stated above, as well as those set forth in his opening brief, Mr. Bevard respectfully requests that this Court vacate his judgment of conviction and remand this case to the district court for a new trial, with instructions that the State be limited to impeaching Mr. Bevard with the fact, but not the nature, of his prior felony convictions.

DATED this 29th day of September, 2016.

_____/s/_____
ANDREA W. REYNOLDS
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 29th day of September, 2016, I served a true and correct copy of the foregoing APPELLANT'S REPLY BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

RYAN DEAN BEVARD
INMATE #89352
SICI
PO BOX 8509
BOISE ID 83707

STEVEN J HIPPLER
DISTRICT COURT JUDGE
E-MAILED BRIEF

JONATHAN LOSCHI
ADA COUNTY PUBLIC DEFENDER
E-MAILED BRIEF

KENNETH K JORGENSEN
DEPUTY ATTORNEY GENERAL
CRIMINAL DIVISION
E-MAILED BRIEF

_____/s/_____
EVAN A. SMITH
Administrative Assistant

AWR/eas